

Commonwealth of Kentucky  
Before the Public Service Commission

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

ALTERNATIVE RATE FILING ADJUSTMENT                     )  
OF MALLARD POINT DISPOSAL SYSTEM, INC.                )     Case No. 2003-00284

ATTORNEY GENERAL'S MOTION TO STRIKE  
APPLICANT'S RESPONSE TO  
WRITTEN COMMENTS OF THE ATTORNEY GENERAL

With, In the Alternative,

ATTORNEY GENERAL'S REJOINDER TO  
APPLICANT'S RESPONSE TO  
WRITTEN COMMENTS OF THE ATTORNEY GENERAL

The Attorney General submits his Motion to Strike the Applicant's Response to the Written Comments of the Attorney General. He also submits, in the alternative, the Attorney General's Rejoinder to the Applicant's Response.

**Motion to Strike**

On 21 November 2003, the Report of Commission Staff was made part of the record in this case. The Commission gave each party 15 days to submit written comments regarding the report. The order of procedure does not provide for additional comments or responses.

Applicant filed a response to the Attorney General's comments. Hence, it has taken a second bite at the apple. The Attorney General objects to the filing, and he moves for the response to be stricken. In the event that the Commission denies this motion, the Attorney General provides his Rejoinder.

## Rejoinder

The Applicant bears the burden to demonstrate the validity of its rate request. The act of presenting an amount in tandem with speculation, conjecture, and supposition that the amount represents a valid expense does not establish an evidentiary basis to support cost recovery. Applicant fails to meet its burden with regard to its chemical expense and \$5,146 of its maintenance expense.

Legal expenses for representing the Applicant before the Commission are recoverable to the extent that the expenses are reasonable.<sup>1</sup> When the Commission finds that legal fees are excessive, it will reduce the expense amount to a reasonable level for recovery through rates.<sup>2</sup>

The Commission can take administrative notice of its orders that address the recovery of legal fees in sewer rate applications under the alternative rate filing procedure. *In the Matter of: The Application of River Bluffs, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, the Commission authorized the amortization of \$5,111 in legal fees for the rate application.<sup>3</sup> *In the Matter of: The Application of Lake Columbia Utilities, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, the Commission authorized the amortization of \$2,243 in legal fees for the rate application.<sup>4</sup> Additionally, in Commission Case No. 2001-062 (*In the Matter of:*

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<sup>1</sup> PSC Case No. 2000-458, Order, 14 August 2001, Staff Report, Adjustment c.

<sup>2</sup> *In the Matter of: Notice of Adjustment of Rates of Kentucky-American Water Company*, Case No. 8314, Order, 8 February 1982, pages 9 and 10; rehearing denied 19 March 1982.

<sup>3</sup> PSC Case No. 2001-00252, Order, 29 July 2002, Amended Staff Report, Adjustment d.

<sup>4</sup> PSC Case No. 2000-458, Order, 14 August 2001, Staff Report, Adjustment c.

*Application of Hillridge Facilities, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*), the applicant did not seek an adjustment for its rate case expense.<sup>5</sup> These three cases provide an adequate basis to measure the reasonableness of the level of legal fees in an application for a rate adjustment under the alternative rate filing procedure.

The Applicant, who has the burden of proof, has not made a demonstration that its level of legal fees is reasonable. In light of legal fees for sewer utilities that, in recent years, have had rate adjustment proceedings under the alternative filing procedure, a reduction to a reasonable amount is in order.

The Attorney General requests several mandates covering two areas. First, the Applicant has a problem with record keeping. Second, Mark Smith commingles his personal funds with those of Mallard Point, and the Applicant may be engaging in nonregulated activity. The Applicant's observations relating to this portion of the Attorney General's Written Comments have no merit.

On the first point, the Attorney General has made a request for the Commission to order (1) the maintenance of vendor invoices, (2) the performance and maintenance of monthly bank reconciliations, and (3) the maintenance of a formal receipts and disbursements journal. Applicant suggests that it is unable to do these things without office equipment, furniture, or a telephone. Applicant's position that it must have things such as a fax machine in order to do

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<sup>5</sup> PSC Case No. 2001-062, Order, 26 November 2001, Staff Report, Adjustment i.

any of these items is simply wrong, and it is alarming. The position evidences a fundamental misunderstanding of these activities.

Moreover, the Staff Report – which Applicant has accepted – notes that in 1997 Mallard Point **agreed** to maintain vendor invoices and maintain bank reconciliations. Commission Audit Staff also advised Mallard Point - in 1997 - that it should maintain a formal receipts and disbursements journal. Applicant's position that it did not contemplate expenses for meeting these items is quite disturbing. It evidences, at minimum, a lack of commitment to honor its prior agreements with the Commission.


On the second point, Applicant fails to demonstrate why a desk, chair, or secretary is necessary for Mark Smith to stop commingling his personal funds with those of Mallard Point. Additionally, Applicant fails to demonstrate why these items are necessary for this utility to not engage in nonregulated activity.

The suggestion that \$32,928 is necessary for this utility to meet the mandates is inane. The improvement requested, many of which were previously accepted by Mallard Point and Mark Smith, do not require the actions and spending that Applicant asserts. Applicant's discussion lacks any merit.

WHEREFORE, the Attorney General moves for the Commission to Strike the Applicant's Response to his Written Comments. Alternatively, in the event the Commission considers Applicant's Response, the Attorney General provides his Rejoinder.


Respectfully submitted,

A. B. CHANDLER III  
ATTORNEY GENERAL

  
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*Notice of Filing*


Counsel gives notice of the filing of the original and ten photocopies of the Motion to Strike with, in the alternative, Rejoinder by hand delivery to Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. 11 December 2003 is the date of filing.

  
Assistant Attorney General

*Certificate of Service*

Counsel certifies service of a true and correct photocopy of the Motion to Strike with, in the alternative, Rejoinder. Service was through mailing the document, first class postage prepaid, to the other parties of record on 11 December 2003. The following are the other parties of record: Mark S. Smith, Mallard Point Disposal System, Inc., 104 Teal Court, Georgetown, Kentucky 40324; Marvin Baker, 107 Broad Bill Ct., Georgetown, Kentucky 40324; Carl Jason, 122 Merganser Court, Georgetown, Kentucky 40324; Eugene F. Mooney, Mooney, Mooney & Mooney, 208 South Limestone, Lexington, Kentucky 40507;

Robert Warhus, 130 Greenwing Court, Georgetown, Kentucky 40324; Doug & Angela Beall, 112 Bluebill Court, Georgetown, Kentucky 40324, Charles F. Knapp, 110 Sheldrake Court, Georgetown, Kentucky 40324; Ronald & Kristy Nail, 201 Widgeon Way, Georgetown, Kentucky 40324; Cullen C. Gault, 333 West Vine Street, 16<sup>th</sup> Floor, Lexington, Kentucky 40588; Winston Faircloth, 144 Greenwing Court, Georgetown, Kentucky 40324; Bob and Judith Marlowe, 145 Green Wing Court, Georgetown, Kentucky 40324; Quinn & Traci Richter, 203 Widgeon Way, Georgetown, Kentucky 40324; and Peggy & Jeron van der Gaag, 13 Shoveler Court, Georgetown, Kentucky 40324.

  
Assistant Attorney General